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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,529	07/30/2001	Rudolf Kammereck	WSUR117373	9636
26389	7590	11/28/2003	EXAMINER	
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/830,529

Applicant(s)

KAMMERECK ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-18, 21, 22, 24-33, 36, 37 and 39-41 is/are rejected.
- 7) ☒ Claim(s) 8-10, 19, 20, 23, 34, 35 and 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7, 12-15, 17, 18, 21, 22, 24, 27, 29, 30, 32, 33, and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,198,991 to Dutton.

Regarding Claims 1, 12, and 27, Dutton teaches a plant coating with a wax emulsion and lipophilic thixotropic smectic clay (Dutton page 2, first column, line 17, 39-41, 46, and 52) for preventing sunburn and inherently insect controlling.

Regarding Claims 2, 14, and 29, Dutton teaches the wax emulsion has a matrix of complex hydrocarbons, an emulsifying agent and water (Dutton page 2 first column line 17-45 and second column line 29).

Regarding Claims 3, 17, and 32, Dutton teaches the emulsifying agent has an anionic lipophilic emulsifier (page 2 line 41) and an ionic hydrophilic emulsifier (page 2 line 45).

Regarding Claims 4, 15, and 30, Dutton teaches the wax emulsion has an edible synthetic oxygen containing wax, an emulsifying agent and water (Dutton page 2 line 39).

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Regarding Claims 6, 18, and 33, Dutton teaches the matrix of the complex hydrocarbons has a wax mixture of long chain fatty acids and long chain esters (Dutton page 2 line 38-41).

Regarding Claim 21, Dutton teaches the composition is diluted (Dutton page 2 first column line 25 and second column 'example').

Regarding Claims 13 and 28, Dutton teaches the treated plant is a tree (Dutton page 1 line 5-6).

Regarding Claims 7, 22, and 37, Dutton teaches the wax mixture is a natural wax selected from Carnauba wax, Candelilla wax, Alfa wax, montan wax, rice-bran wax, beeswax, Japan wax, and mixtures (Dutton page 2 line 39).

Regarding Claims 24 and 39, Dutton teaches the plant is treated by spraying the composition onto the surface of the plant (Dutton page 2, column 2, line 55).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 16, 25, 26, 31, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,198,991 to Dutton.

Regarding Claims 5, 16, and 31, Dutton is silent on the plant protective coating has about 0.5 to 10% (weight/weight) lipophilic thixotropic smectic clay and about 90 to 99% wax emulsion. However, it would have been obvious to one of ordinary skill in the

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art to modify the teachings at the time of the invention through routine tests and experimentation to optimize the system for complete coverage.

Regarding Claims 25 and 40, Tisdale et al as modified is silent on the composition is sprayed with an application rate of about 100 to 500 gallons per acre. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings through routine tests and experimentation to achieve an efficient and complete application coverage for the plant.

Regarding Claims 26 and 41, Dutton as modified teaches the composition is sprayed onto the plant multiple times (Dutton page 2, column 2, line 55).

Allowable Subject Matter

Claims 8-10, 19, 20, 23, 34, 35, and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 11 is allowed.

The following is an examiner's statement of reasons for allowance:

Cited references U.S. Patent No, 3,847,641, U.S. Patent No. 2,057,413, U.S. Patent No. 5,283,060, U.S. Patent No. 5,733,531, U.S. Patent No. 4,882,874, U.S. Patent No. 4,802,304, U.S. Patent No. 6,036,765, U.S. Patent No. 3,869,414, German Patent DE 1492835, United Kingdom Patent GB 2011788, U.S. Patent No. 2,198,991 and U.S. Patent No. 2,128,973 teach a lipophilic thixotropic smectic clay, a wax emulsion, a natural wax and water. The prior art of record all fails to show, and fails to make obvious, either alone and/or in combination the weight percentages of each

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component of the composition and the oleic acid and morpholene constituents as taught by applicant.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

Applicant's arguments with respect to claims 1-7, 12-18, 21, 22, 24-33, 36, 37, and 39-41 have been considered but are moot in view of the new ground(s) of rejection.

Dutton teaches bentonite (Page 2 first column line 45 and second column line 11-15) which is a thixotropic smectic clay. Dutton then teaches that ammonium salts (page 2 line 41). The addition of the ammonium would inherently create a lipophilic condition. Therefore, examiner maintains that the teachings of Dutton teach a wax emulsion and a lipophilic thixotropic smectic clay.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,036,768 German Patent DE 1492835; and U.S. Patent No. 3,869,414.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-

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3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV



PETER M. POON
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